

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                                |                                  |
|--------------------------------|----------------------------------|
| ONEBEACON INSURANCE COMPANY, ) |                                  |
| Plaintiff(s), )                | No. C07-3540 BZ                  |
| v. )                           | <b>ORDER GRANTING MOTION FOR</b> |
| HAAS INDUSTRIES, INC, )        | <b>ATTORNEY'S FEES</b>           |
| Defendant(s). )                |                                  |
| _____ )                        |                                  |

OneBeacon Insurance Company ("OneBeacon") sued Haas Industries, Inc. ("Haas") as the subrogee of Professional Products, Inc. ("PPI") under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, to recover the cost of PPI's lost electronic equipment. Omneon Video Networks ("Omneon") had sold the equipment to PPI, and arranged for Haas to ship the equipment. Some of the equipment was lost in transit. OneBeacon claimed that under section 14706, Haas was liable for the actual value of the equipment because Haas' bill of lading failed to adequately limit its liability.

After a court trial, I entered judgment on behalf of

1 Haas. I found that OneBeacon did not have standing to sue  
2 under the relevant portion of the Carmack Amendment<sup>1</sup> and that,  
3 regardless of the standing issue, OneBeacon had successfully  
4 limited its liability under the Carmack Amendment. Haas has  
5 now moved to recover its attorney's fees under the fee  
6 provision in the bill of lading. It provides that: "[s]hould  
7 Haas Industries successfully defend itself of any legal  
8 actions brought by any party with an interest in this  
9 shipment, Haas Industries shall be entitled to reasonable  
10 attorneys fees and costs."

11 OneBeacon opposes the motion on two grounds. OneBeacon  
12 contends that attorney's fees are not recoverable in Carmack  
13 Amendment cases and that Haas is not entitled to attorney's  
14 fees because it did not request them in its answer.<sup>2</sup>

15 OneBeacon is correct that the relevant section of the  
16 Carmack Amendment does not provide for attorney's fees. Mosso  
17 v. Dependable Auto Shippers, Inc., No. 1:07-00005, 2007 WL  
18 2746723, at \*5 (E.D. Cal., Sept. 19, 2007). However, this does  
19 not prevent the parties from agreeing to a provision awarding  
20 attorney's fees in the bill of lading. Id. at \*6; see also  
21 Travelers Cas. and Sur. Co. of Amer. v. Pacific Gas & Elec.  
22 Co., 127 S.Ct. 1199, 1203 (2007) (The American rule that the

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24 <sup>1</sup> 49 U.S.C. section 14706(a)(I) provides that a carrier  
25 is "liable to the person entitled to recover under the receipt  
26 or bill of lading."

27 <sup>2</sup> At the hearing, OneBeacon raised several additional  
28 arguments that it did not raise in its opposition. I decline  
to consider these arguments for the purpose of deciding this  
motion. Palacios v. City of Oakland, 970 F.Supp. 732, 744  
(N.D. Cal. 1997). There will be no further briefing on these  
arguments.

1 prevailing party is not entitled to attorney's fees can be  
2 overcome by an enforceable contract providing for them.) As  
3 Mosso noted, neither Accura Sys., Inc. v. Watkins Motor Lines,  
4 Inc., 98 F.3d 874 (5th Cir. 1996) nor PolyGram Group  
5 Distribution, Inc. v. Transus, Inc., 990 F.Supp. 1454 (N.D.  
6 Ga. 1997), the same cases on which OneBeacon relies, "nor any  
7 other case interpreting § 14706 addresses the validity of  
8 attorney's fees provisions included within a bill of lading."  
9 Id. at \*5.

10 Nor am I persuaded by OneBeacon's second ground for  
11 opposing the motion, that Haas is precluded from requesting  
12 attorney's fees because they were not requested in its  
13 answer.<sup>3</sup> OneBeacon cites no authority, and I am not aware of  
14 any, that would deny a defendant fees if not prayed for in its  
15 answer. The cases OneBeacon cites involve *plaintiffs* who  
16 failed to demand attorney's fees in their *complaints*, often  
17 where the fees were deemed to be special damages which must be  
18 sought in the prayer. None of OneBeacon's cases require a  
19 defendant to pray for attorney's fees on the answer.<sup>4</sup> More  
20 persuasive is the Fifth Circuit's holding in Engel v.  
21 Teleprompter Corp., that a prevailing defendant in a breach of  
22 contract case could collect attorney's fees even if it failed  
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24 <sup>3</sup> Haas did pray for its costs of suit.

25 <sup>4</sup> Plaintiff does cite to Judge Schwarzer's treatise  
26 which states that a defendant "should" set forth a request for  
27 attorney's fees in the answer. Schwarzer, et al., Federal  
28 Civil Procedure Before Trial, 8:249 (2008). However, the  
treatise cites no authority for that proposition, instead  
relying on cases involving a plaintiff's duty to pray for  
attorney's fees in the complaint. Id. at 8:154.

1 to seek fees in its answer. 732 F.2d 1238, 1242 (5th Cir.  
 2 1984) ("Where a statute or contractual provision authorizes a  
 3 fee award, such an award becomes the rule rather than the  
 4 exception, and should be awarded routinely as are costs of  
 5 suit. We stress that no one disputes that the present contract  
 6 authorizes a fee award under these circumstances." Id. at  
 7 1241) see also James WM. Moore, Moore's Federal Practice, §  
 8 54.72[1][d] (2008) ("court should award attorney's fees under  
 9 Rule 54(c)<sup>5</sup> whenever that relief is appropriate under the law  
 10 and the facts proven, and timely and properly documented  
 11 motion for fees is filed under Rule 54(d)(2)").<sup>6</sup>

12 Haas' request for attorney's fees is timely under Local  
 13 Rule 54-6(a). Other than the two arguments addressed above,  
 14 OneBeacon makes no claim that the fee provision is not  
 15 enforceable. Nor does it challenge the hours claimed or the  
 16 rate requested. I find that Haas' request for \$46,200 in fees  
 17 (220 hours at \$210.00 per hour) is reasonable in light of the  
 18 significant time required to defend this action, including  
 19 OneBeacon's motion for summary judgment and its claims at  
 20 trial. As such, Haas' motion for attorney's fees is **GRANTED**

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23 <sup>5</sup> **"Demand for Judgment; Relief to Be Granted. . . .**  
 24 Every other final judgment should grant the relief to which  
 25 each party is entitled, even if the party has not demanded that  
 relief in its pleadings." Fed. R. Civ. P. 54(c).

26 <sup>6</sup> OneBeacon does not claim it has been prejudiced by  
 27 Haas' failure to request fees, which is not surprising since  
 28 OneBeacon pled the existence of bill of lading that contained  
 the fee provision.

1 and it is awarded \$46,200 in fees.

2 Dated: September 18, 2008

A handwritten signature in black ink, reading "Bernard Zimmerman", written over a horizontal line.

Bernard Zimmerman  
United States Magistrate Judge

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